

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/501,885</p>	<p>Applicant(s) KUROIWA ET AL.</p>	
	<p>Examiner LEONARD J. WEINSTEIN</p>	<p>Art Unit 3746</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Devon C Kramer/
Supervisory Patent Examiner, Art Unit 3683

/Leonard J Weinstein/
Examiner, Art Unit 3746

Continuation of 11. does NOT place the application in condition for allowance because:

1. Applicant's arguments filed April 17, 2008 have been fully considered but they are not persuasive. With respect to the rejection of claims 1, 2, 4, and 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Kajiwara US 5,256,033, in view of Lovisetto (EP 55426), and further in view of Kajiwara US 5,318,403, the applicant argues that the combination of references does not teach "a relief plate having an outer circumferential end face which is held in contact with an inner surface of a cylindrical side portion of said adjacent intermediate casing is attached to said bottom portion of said intermediate casing." The applicant argues that Kajiwara '033 does not teach a relief plate in contact with an inner surface of a casing, and Lovisetto does not teach a relief plate in addition to a partition member. The applicant argues that one of ordinary skill in the art would not modify Kajiwara '033 by extending a side plate from an inner circumference of a interstage casing based on the teachings of Lovisetto for a multistage pump. The applicant also argues the examiner's rationale that a modification would amount to a rearrangement of parts, is not sufficient to support the obviousness rejection set forth in the prior action.
2. The applicant argues that the combination of references does not teach "wherein said relief plate, said stage side portion, said stage flat portion, and said inner surface of said cylindrical portion of said adjacent intermediate casing form a space in which an O-ring is fitted." The applicant argues that a modified structure incorporating the references would not teach a side plate that contributes to forming a space in which an O-ring is fitted.
3. In response to applicant's argument that one of ordinary skill in the art would not modify Kajiwara '033 by extending a side plate from an inner circumference as a result of what is taught by Lovisetto for a multistage pump, the examiner disagrees. As a matter of priority the examiner notes that Lovisetto was not relied upon to teach a partition and a relief plate. Lovisetto was relied upon to teach a plate on an interstage casing that extended from an inner surface of the casing. The modification proposed by the examiner did not include a substitution of the wall 24 and side plate 33 of Kajiwara '033 for the partition plate 12 of Lovisetto. Lovisetto was relied upon to teach that it was known in the art to attach a plate to the inner surface of a stage casing. Further Lovisetto teaches a plate that extends from the inner surface of the casing in a section of the casing that is located in front of an impeller. The examiner also notes that Lovisetto discloses a "ring-like tooth 15" of a next interstage casing 11 that abuts a partition plate 12. This is similar to configuration of the upper section of the wall 24 of Kajiwara '033, which comes into abutment with a side plate 33 via a welded joint. The wall 24 of Kajiwara '033 is actually an analogous structure to the tooth 15 taught by Lovisetto. Applicant's argument that a partition plate 12 of Lovisetto provides a wall separating stages and one of ordinary skill in the art would not substitute the wall 24 and plate 33 of Kajiwara '033 with the partition 12 of Lovisetto mischaracterizes the modification suggested by the examiner.

In response to applicant's argument that a combination of the references would not teach a side plate that contributes to forming a space in which an O-ring is fitted, the examiner disagrees. Lovisetto teaches that an objective of the invention of EP 055426 is to provide a multistage pump with a stage compartment (case 11) that is "a monolithic type of structure" of which "the construction is considerably simple," (pg. 5 ll. 2-14). Lovisetto also teaches an O-ring that is disposed between a partition plate 12 and a shoulder 19 of a case 11 that is formed just above a section of the case 11 that is continued to form the ring-like tooth of element 15. Kajiwara '033 teaches that an alternative embodiment for an interstage casing that "dispenses with a relief portion 26" on a bottom wall member 24, is within the scope of the invention of Kajiwara '033 (Kajiwara '033 – col. 5 ll. 6-8). Kajiwara '403 disclose that the prior art teaches that an embodiment of a multistage pump configuration with a side wall 7 extending from an inner surface 3b of an inter-stage casing was known in the art at the time the invention was made, as shown in figure 6. It is also noted that Kajiwara '403 teaches a wall member 2 that is analogous to the wall member of Kajiwara '033 without a curved relief portion. Every element of the limitations as claimed, and which applicant argues in the amendment of April 17, 2008, is disclosed by the references as discussed. The examiner maintains that modifying Kajiwara '033 such that a side plate 33 extends to an end surface 22 on an interstage casing 23, constitutes a rearrangement of parts which requires routine skill in the art. Lovisetto provides the motivation for anyone of routine skill in the art to modify the interstage sections of Kajiwara '033, as such a modification could lead to a simpler construction. Kajiwara '033 teaches this motivation has been contemplated with the disclosure that an interstage casing can be formed without a relief portion. In a majority if not all the embodiments of each reference, the stage casings are formed from sheet metal. A casing with fewer bends, such as those disclosed in the embodiment of figure 1 with elements 25 and 26 Kajiwara '033, would be easier to manufacture. Thus ample motivation to attempt the modification suggested in the prior office actions, by one of ordinary skill in the art, has been provided by the references as discussed above.

The limitations as claimed do not provide more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement. The rejections of claims 1-6 under 35 U.S.C. 103(a) as being unpatentable over Kajiwara US 5,256,033, in view of Lovisetto (EP 55426), and further in view of Kajiwara US 5,318,403, have been upheld.